

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Revision of the Commission's Rules To Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	

To: Chief, Wireless Telecommunications Bureau

**NORTH DAKOTA PCS ALLIANCE
REPLY TO COMMENTS OF NENA, APCO AND NASNA**

The North Dakota PCS Alliance ("Alliance"), by its attorney and pursuant to Section 1.45(c) of the Commission's Rules, hereby replies to the joint "Comments of NENA, APCO and NASNA" ("Comments"), filed September 11, 2002 by the National Emergency Number Association ("NENA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of State Nine One One Administrators ("NASNA") (collectively "the Public Safety Organizations"), insofar as the Comments pertain to the Alliance's "Petition for Waiver of E911 Phase II Location Technology Implementation Rules," filed July 31, 2002 (the "Waiver Request"). In support hereof, the following is shown:

1. The Public Safety Organizations take no position on the merits of the Alliance's Waiver Request, but instead mistakenly characterize it as "woefully tardy" and request that the matter be referred to the Enforcement Bureau so that the Alliance can be compelled to explain the delay in filing the Waiver Request (Comments, pg. 2).

2. In point of fact, the Alliance's Request is not tardy and no basis exists for a referral to the Enforcement Bureau. As of the November 30, 2001 deadline that the FCC established for small and mid-sized carriers to file their requests for relief from the E911

Phase II rules (if necessary),¹ the Alliance had not yet constructed its F-Block broadband PCS system in the Williston, North Dakota Basic Trading Area (the Williston BTA), and it had not decided (nor was it under any obligation to decide as of that date) whether to deploy a handset-based or network-based ALI technology in its network. According to the unambiguous terms of Rule Section 20.18 (a), the Commission's basic and enhanced 911 service rules apply to carriers only to the extent that they are providing service.² Therefore, since its broadband PCS system was not constructed and the Alliance was not providing service on or before November 30, 2001, it was under no regulatory requirement to provide E911 Phase II service, to elect between a handset-based or network-based ALI solution, or to request relief from any Section 20.18 requirements.

3. The Alliance completed construction of its broadband PCS system and began providing service in the Williston BTA in April of 2002.³ Shortly thereafter, the Alliance filed an application seeking consent to assign its Williston BTA license to North Dakota Network Company ("NDNC").⁴ After considering the ALI technologies available for its CDMA network, and in light of an agreement for switching services that the Alliance had entered into with NDNC, the Alliance determined that it would utilize a handset-based solution to implement E911 Phase II capability. The Alliance notified the Commission of

¹ See Public Notice, "Commission Establishes Schedule For E911 Phase II Requests By Small And Mid-Sized Wireless Carriers," FCC 01-302, dated October 12, 2001, at pg. 1 ("October 2001 Waiver Notice"). In establishing the November 30, 2001 deadline for small and mid-sized wireless carriers subject to the E-911 Rules to file requests for relief, the Commission emphasized that such requests had to be filed only "if necessary" and only if the carriers "need to do so."

² 47 C.F.R. § 20.18 (a). This rule states, in relevant part, that "service providers in [the] enumerated services are subject to the following requirements solely to the extent that they offer real-time, two way switched voice service..." *emphasis added*.

³ The Alliance timely filed its five-year construction notification on April 29, 2002 and this buildout showing has been accepted by the Commission. See FCC File No. 0000868102.

⁴ See FCC Form 603 application filed June 18, 2002 under FCC File No. 0000916174.

this choice on July 30, 2002,⁵ in accordance with procedures set forth in the Third Report and Order in CC Docket No. 94-102 and related Public Notice, DA 00-2099 (*rel.* September 14, 2000).

4. The Phase II Status Report informed the Commission that the Alliance had “not yet received any requests for Phase I or Phase II service, and [did] not expect any such requests in the next six months, based on information from the PSAP for Williams County.”⁶

5. As the Commission’s Rules and Wireless Bureau guidance make clear, the Alliance was under no obligation to provide E911 Phase I or Phase II service in the absence of a valid PSAP request. Moreover, the Alliance had no basis for seeking relief from the FCC’s E911 Phase II ALI rules until it had chosen to deploy a handset-based ALI solution. Stated another way, relief from the Section 20.18 schedule for the marketing of ALI-capable handsets was not needed until the Alliance elected to deploy a handset-based ALI and notified the Commission through the filing of its E911 Phase II Status Report, which was filed concurrently with the Waiver Request. Thus, the Waiver request was timely-filed, as a matter of law.

6. Simultaneously with informing the Commission of its E911 Phase II technology plans, the Alliance filed its Waiver Request. The Waiver Request noted the Alliance’s dependence on NDNC for switching services, and because Phase II ALI is a switch-based service, the Alliance sought regulatory relief identical to that sought by NDNC in its own Petition for Waiver.⁷

⁵ See E911 Phase II Status Report of North Dakota PCS Alliance, CC Docket No. 94-102 (*filed* July 30, 2002) (“Phase II Status Report”).

⁶ *Id.* at p. 2.

⁷ See NDNC Petition for Waiver, CC Docket No. 94-102, *filed* September 19, 2001, *as modified by* NDNC Supplement to Petition for Waiver, *filed* June 28, 2002. NDNC’s request for relief was granted by

7. The Alliance's choice to conform its Waiver Request to NDNC's request for relief was entirely appropriate in light of the Wireless Bureau's recommendation that "[c]arriers may combine requests for relief and the filing of a revised plan in a single consolidated filing, and multiple carriers may file requests for relief and revised plans jointly."⁸

8. The Wireless Bureau granted its consent for the Alliance to assign its Williston BTA license to NDNC on September 6, 2002.⁹ Upon consummation of this transaction, the Williston BTA F-Block system will become an integral part of NDNC's broadband PCS network, and will be covered by the relief granted to NDNC under the terms of the *Stay Order*.¹⁰

9. Even assuming for purposes of argument that the Alliance's Waiver Request was untimely-filed (which it most assuredly was not), no referral to the Enforcement Bureau would be warranted in any event. In the *Stay Order*, the Commission, on its own motion, chose "to grant relief to all carriers filing a waiver request, including late-filed waivers." *Stay Order*, Paragraph No. 10, n. 21 (emphasis added). Yet none of the late filers were referred to the Enforcement Bureau for any purpose. Nor should they be. The Alliance is a small carrier serving very rural areas in North Dakota. Licensees and PSAPs alike in such areas must be very careful in choosing and deploying technologies. The population is so sparse and the terrain so difficult that it is generally cost-prohibitive to change technologies

the Commission in its July 26, 2002 Order to Stay. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, FCC 02-210 (rel., July 26, 2002) ("*Stay Order*").

⁸ *Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification rules*, Public Notice, DA 01-2459 (rel. October 19, 2001), at p. 2.

⁹ *Wireless Telecommunications Bureau Grants Consent to Assign F-Block Broadband PCS Licenses*, Public Notice, DA 02-2181 (rel. September 6, 2002).

¹⁰ NDNC is listed as one of the carriers covered by the *Stay Order*. *Stay Order* at Appendix A.

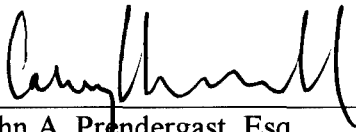
in mid-stream. In a situation in which the PCS marketplace has been volatile, and the PSAP had not even requested Phase I capability, the alliance cannot be faulted for waiting to choose its PCS format and E911 solution.

WHEREFORE, the Alliance requests that the relief requested in the Comments be denied; and that its Waiver Request be granted.

Respectfully submitted,

NORTH DAKOTA PCS ALLIANCE

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Certificate of Service

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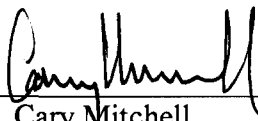
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